

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICTOR EMEONYE,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

No. 04-03386 SC

ORDER RE: PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND
DEFENDANT'S CROSS-
MOTION FOR SUMMARY
JUDGMENT

I. INTRODUCTION

Plaintiff Victor Emeonye ("Plaintiff" or "Claimant") moves for summary judgment on his action seeking review of the Social Security Commissioner's final decision denying his claim for Social Security disability benefits. Defendant Jo Anne Barnhart ("Defendant" or "Commissioner") has cross-motined for summary judgment. For the reasons set forth below, this Court hereby DENIES both motions and REMANDS the matter for further consideration.

II. BACKGROUND

Claimant Victor Emeonye worked as a security guard from 1986 to 2002. Administrative Record ("AR") at 28. On June 4, 2002, Claimant was stabbed multiple times and suffered injuries to the

1 chest, neck, abdomen, and hand. AR at 143. He was taken to San
2 Francisco General Hospital, where he underwent open-heart surgery
3 to repair a "very complex laceration of the right ventricle" and
4 to remove a "large amount of clot" in the pericardium. AR at 149.
5 Plaintiff's attending surgeons also performed a limited upper
6 abdominal exploration, but elected not to undertake a full
7 exploratory laparotomy because of the extensive adhesions already
8 present in Claimant's abdomen as a result of a 1997 shooting
9 incident. Id. Claimant remained in the hospital for eight days
10 and was released with a good prognosis. AR at 138. Claimant
11 alleges that he has been disabled since the date of the stabbing,
12 June 4, 2002.

13 Several months after his surgery, Claimant began experiencing
14 nausea, digestive problems, dizziness, watery eyes, headaches, and
15 discomfort in the upper abdomen. AR 215-17; 233-34. As a result
16 of these symptoms, Plaintiff visited the South of Market Medical
17 Center for medical attention and follow-up appointments in
18 October, November, and December 2002, and again in January,
19 February, and March 2003. Id. at 213-17.

20 On February 9, 2003, Plaintiff had a seizure and was treated
21 at San Francisco General Hospital. AR at 130-31. A CT scan taken
22 days later revealed a chronic subdural hematoma. AR at 124-25. A
23 subsequent CT scan taken May 6, 2003 confirmed this diagnosis and
24 also revealed a "left inferior temporal encephalomalacia." AR at
25 257. A third CT scan was performed on March 3, 2004, after
26 Claimant's December 10, 2003 hearing before the Administrative Law
27 Judge ("ALJ"), and revealed no significant changes in Claimant's
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1 physiological condition. AR at 17.

2 Plaintiff experienced another seizure on April 28, 2004, for
3 which he was treated at Seton Medical Center. AR 19-20. Claimant
4 was instructed to see a physician for follow-up care, and was
5 discharged with a prescription for Dilantin anti-seizure
6 medication. AR at 19. On May 1, 2004, Claimant checked in to the
7 Emergency Department of the Saint Francis Medical Center, where he
8 received medical attention for hallucinations. AR at 21.
9 Plaintiff asserts that his hallucinations were actually the result
10 of another seizure episode. Pl.'s Mem. Supp. Mot. Sum. J. at 5.

11 Claimant asserts that he is disabled and unable to return to
12 work because of chest pain, high blood pressure, gastroesophageal
13 reflux disease, nausea, and damage to his cerebral cortex, which
14 Plaintiff claims is responsible for his recurring headaches,
15 dizziness, and seizures. Pl.'s Mem. Supp. Mot. Sum. J. at 4-5.
16 After his claim for disability benefits was denied at the initial
17 and reconsideration stages, Claimant testified at a hearing before
18 an Administrative Law Judge ("ALJ") on December 10, 2003. On
19 February 19, 2004, the ALJ denied Plaintiff's claim, a decision
20 that became final on August 10, 2004 when the Appeals Council
21 declined to review the ALJ's decision. Plaintiff filed a
22 complaint seeking review of the ALJ's decision with this Court on
23 August 18, 2004.

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25 **III. LEGAL STANDARD**

26 This court may set aside the decision of the ALJ if it is
27 based on an incorrect application of the law or is not supported
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1 by substantial evidence. 42 U.S.C. § 405(g). "Substantial
2 evidence" is the relevant evidence which a reasonable person might
3 accept as adequate to support the ALJ's conclusion. Reddick v.
4 Chater, 157 F.3d 715, 720 (9th Cir. 1998). In order to be
5 "substantial," the evidence must amount to "more than a mere
6 scintilla," but need not rise to the level of a preponderance.
7 Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989). Where the
8 evidence could reasonably support either affirming or reversing
9 the ALJ's decision, this Court may not substitute its judgment for
10 the ALJ's decision. Reddick, 157 F.3d at 720-21.

11 12 **IV. DISCUSSION**

13 Claimant argues that this Court should reverse the ALJ's
14 decision because the ALJ improperly rejected the opinion of
15 Claimant's treating physician, Dr. Chaudary, who on two separate
16 occasions opined that Claimant was disabled. Pl.'s Mem. Supp.
17 Mot. Sum. J. at 5. The parties agree that in order to reject the
18 opinion of a treating physician, the ALJ must provide specific and
19 legitimate reasons that are supported by substantial evidence in
20 the record. Pl.'s Mem. Supp. Mot. Sum. J. at 5, citing Reddick at
21 725; Def.'s Mem. Supp. Mot. Sum. J. at 3, citing Magallanes at
22 751. The parties disagree, however, on the question of whether
23 the record supports the ALJ's decision to reject the opinion of
24 Plaintiff's treating physician.

25 In his decision, the ALJ declined to accord significant
26 weight to Dr. Chaudary's opinion because it was "not shown to be
27 corroborated by objective or other clinical evidence." AR at 29.

1 After observing Claimant testify and reviewing the evidence in the
2 record, the ALJ found that the evidence instead demonstrated that
3 Plaintiff had responded favorably to treatment for his injuries
4 and demonstrated "few objective abnormalities." AR at 29. The
5 ALJ therefore credited the assessments of two State Agency Medical
6 Consultants that reported "sufficient capacity for Medium Work,
7 while precluding exposure to hazardous conditions." Id. The
8 Commissioner urges this Court to affirm the ALJ's decision,
9 arguing that Dr. Chaudary's opinion was "conclusory, inadequately
10 supported by clinical findings and inconsistent with his own
11 treatment notes." Def.'s Mem. Supp. Mot. Sum. J. at 7.
12 Significantly, both the ALJ and the Commissioner noted the lack of
13 further seizures as a factor that supported their conclusions that
14 the Plaintiff was not disabled during the relevant time period.
15 AR at 29 ("[I]t is relevant that the claimant has reported only
16 two seizures during the past year..."); Def.'s Mem. Supp. Mot.
17 Summ. J. at 6.

18 District Courts retain the discretion to remand a case for
19 consideration of new evidence not originally presented to the ALJ,
20 provided that the evidence is material and that there is good
21 cause for the evidence not having been presented previously. 42
22 U.S.C. § 405(g); Melkonyan v. Sullivan, 501 U.S. 89, 90 (1991).
23 Evidence is material if it bears "directly and substantially" on
24 the matter in dispute, see Burton v. Heckler, 724 F.2d 1415, 1417
25 (9th Cir. 1984), a standard that is satisfied where "there is a
26 reasonable possibility that the new evidence would have changed
27 the outcome of the Secretary's determination had it been before
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1 him." Booz v. Secretary of Health and Human Services, 734 F.2d
2 1378, 1380 (9th Cir. 1983).¹ A claimant shows good cause for not
3 having produced the evidence by demonstrating that a practical
4 obstacle existed that prevented the evidence from being previously
5 discovered. See Burton, 724 F.2d at 1417-18.

6 At the hearing, the ALJ directly considered Claimant's
7 assertion that his subdural hematoma and temporal encephalomalacia
8 were causing debilitating seizures and other symptoms.
9 Ultimately, however, the ALJ remained unconvinced that the
10 symptoms allegedly caused by Plaintiff's head injuries were severe
11 enough to render Claimant disabled. In this respect, Claimant's
12 ability to perform his duties as a security guard free from
13 debilitating seizure activity and other symptoms was an issue that
14 was squarely before the ALJ. Consequently, resolution of this
15 issue, central to Plaintiff's claim, would benefit from
16 consideration of evidence regarding Plaintiff's more recent
17 seizure activity, in that such recurring seizures, if proven,
18 would support Plaintiff's claim that his head injuries were indeed

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20 ¹ This Court notes that the standard for materiality used by
21 District Courts in evaluating whether newly-discovered evidence
22 warrants remanding a case is different from the standard utilized
23 by the Appeals Council in determining whether to review the ALJ's
24 decision. Compare Booz (outlining the "reasonable possibility"
25 standard) with 20 C.F.R. 404.970 and 416.1470 (Appeals Council will
26 review the case if it finds that the ALJ's action, findings, or
27 conclusion "is contrary to the weight of the evidence currently of
28 record."). Therefore, the fact that the Appeals Council decided
not to review the ALJ's decision, even after considering Claimant's
evidence of recurring seizure activity, does not affect this
Court's evaluation of whether this same evidence is material under
§405(g). C.f. Ferrell v. Chater, No. C-96-1772, 1996 WL 637851
(N.D. Cal. 1996) (applying materiality standard from Booz in
evaluating evidence that was presented to the Appeals Council but
was not available at the time of the ALJ's decision).

1 severe, and were causing chronic headaches, dizziness, and other
2 potentially debilitating symptoms. See Burton, 724 F.2d at 1417-
3 18.

4 This case is therefore similar to Burton, where the Ninth
5 Circuit found that evidence gathered by the claimant after the
6 date of the hearing that related directly and substantially to an
7 issue that was before the ALJ met the materiality requirement of
8 section 405(g). Id at 1417. Although the new evidence in Burton
9 consisted of an additional psychiatric evaluation rather than
10 evidence documenting the recurrence of an allegedly debilitating
11 condition, this Court is not aware of any reason why that
12 distinction alone removes this case from the purview of the Ninth
13 Circuit's decision in Burton. Accordingly, this Court finds that
14 the evidence of recurring seizures bears directly and
15 substantially on an issue that was central to Plaintiff's claim,
16 and is therefore material within the meaning of section 405(g).

17 Claimant has also demonstrated good cause for his failure to
18 present this evidence to the ALJ, in that further seizure activity
19 did not occur until after the ALJ's decision had been issued.
20 Accordingly, on remand, the ALJ should consider all evidence
21 bearing on the issue of Claimant's physical and mental fitness to
22 return to work during the relevant time period, including evidence
23 gathered since the December 10, 2003 hearing.

24 **V. CONCLUSION**

25 For the reasons described above, this Court holds that the
26 newly-discovered evidence of recurring seizures is material, and
27 that Claimant has shown good cause for failing to present that
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evidence to the ALJ. Accordingly, this Court DENIES both motions for summary judgment and REMANDS this matter for further consideration.

IT IS SO ORDERED.

Dated: June 21, 2005

/s/ Samuel Conti
UNITED STATES DISTRICT JUDGE